

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.6.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C. (A) Nos.768 & 769 of 2007

Commissioner of Income Tax
Chennai. .. Appellant in
both appeals

Vs.

M/s. Adyar Gate Hotel Ltd.
132, TTK Road
Chennai 600 018. .. Respondent in
both appeals

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench dated 31.5.2006 in ITA Nos.1520 & 1521/Mds/2002, for the assessment years 1996-1997 & 1997-1998 respectively against the order of the Commissioner of Income Tax (Appeals-III) Chennai- 600 034 dated 31.5.2002 in ITA No.Tr.558-559/2001-2002/AIII and 525/2001-02/A-III against the order of the Joint Commissioner of Income Tax, special Range III, Chennai 600 034 dated 30.3.1999 and 31.3.2000 in P.A.N/G.I.R.NO.20-A Assessment year 1996-97 & 1997-98 respectively.

For Appellant : Mr.J.Narayanasamy, Sr.S.C.

सत्यमेव जयते
J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the order of the Income-tax Appellate Tribunal in ITA Nos.1520 & 1521/Mds/2002 dated 31.5.2006 for the assessment years 1996-97 and 1997-98 respectively, raising the following substantial question of law.

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the order under Section 154 was wrong as the issue was a debatable one, when the issue has been clearly settled by orders of the High Court and Supreme Court?"

2. The brief facts led to the filing of the above appeals are as under.

The assessee is engaged in the business of running hotels. For the assessment years 1996-97 and 1997-98, the assessee filed the returns claiming relief under Section 80HHD of the Act and the same was allowed by the Assessing Officer. Finding that the deduction under Section 80HHD was computed including the interest earned on short term deposits, the Assessing Officer passed an order of rectification that the interest received is taxable under the head income from other sources. Hence, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The Commissioner dismissed the appeals on the ground that the Assessing Officer had rightly rectified the assessment. On further appeals preferred by the assessee before the Income Tax Appellate Tribunal, the Tribunal, holding that the Assessing Officer has exceeded in his jurisdiction while acting under Section 154 of the Act, as the issue was a debatable one, allowed the appeals. Hence, the present appeals.

3. In Commissioner of Income Tax v. Sharp Industries (282 ITR 336), where the claim of the assessee therein with regard to deduction under Sections 80HHC and 80I of the Act was disallowed under Section 154 of the Act, this Court has held that the claim of the assessee could not be disallowed in a proceeding under Section 154 of the Act, especially when the interest income was included in the profit of the business.

4. Applying the ratio laid down in the decision cited supra, we do not find any substantial question of law arises for our consideration. Accordingly, these appeals are dismissed. Consequently, M.P.No.1 of 2007 is also dismissed.

सत्यमेव जयते Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Assistant Registrar,
Income Tax Appellate Tribunal
III Floor, Rajaji Bhavan, Besant Nagar,
Chennai-91.

2. The Commissioner of Income Tax,
Chennai.

3. The Income Tax Appellate Tribunal
Madras 'A' Bench, Madras.

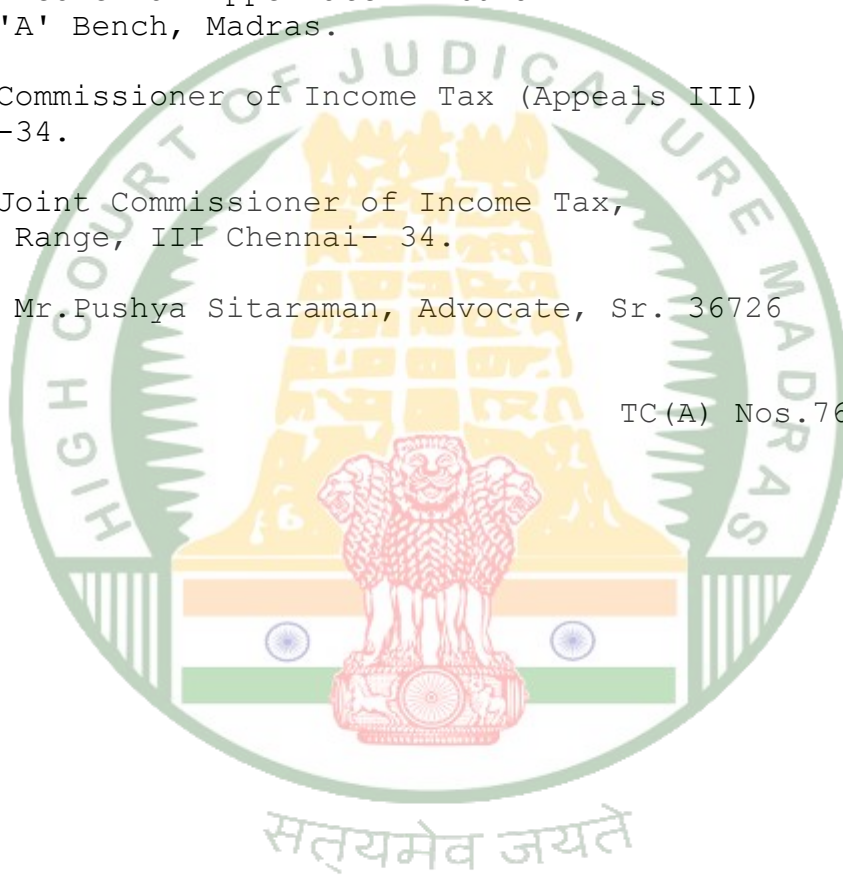
4. The Commissioner of Income Tax (Appeals III)
Chennai-34.

5. The Joint Commissioner of Income Tax,
Special Range, III Chennai- 34.

1 cc to Mr.Pushya Sitaraman, Advocate, Sr. 36726

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